

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint no. 1141/2019

Date of First hearing 12.12.2019

Date of decision 12.12.2019

1.M3M INDIA PRIVATE LIMITED

Address: SB/C/5L/Office/008, M3M Urbana,
Sector-67, Gurugram-122102, Haryana

2.COAGENT REALTORS PRIVATE LIMITED

Address: LGF, F-22, Sushant Shopping
Arcade, Sushant Lok, Phase-1,
Gurugram-122002, Haryana

Complainants

Versus

1. RAJ KUMAR SHARMA

2.VIKAS GUPTA

Both rr/o: Gail Housing Society,
Flat No. C-108, GH-9, Sector-56,
Gurugram-122003, Haryana

Respondents

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Ms Shriya Takkar
Sh. Manoj Yadav and
Ms. Mehr Kaur

Advocate for complainants

Advocate for the respondents

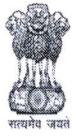
ORDER

1. The present complaint has been filed by the complainants/promoters M3M India Private Limited against the allottee Raj Kumar Sharma and Vikas Gupta, under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule

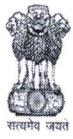
28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 19(6),(7),(10) of the Act.

2. The particulars of the project, the details of sale consideration, the amount paid by the respondents, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form: -

S.No.	Heads	Details
1.	Project name and location	M3M Woodshire, Dwarka Expressway Sector-107, Gurugram
2.	Project area	18.88125 acres
3.	Nature of project	Group Housing Colony
4.	RERA registered/ not registered	Not Registered
5.	License No. and validity status	33 of 12 Dated 12.04.2012 valid up to 11.04.2018
6.	Name of licensee	Cogent Realtors Private Limited
7.	Unit no., Tower no.	MW TW-B-04/0304, 3 rd floor, Tower B04
8.	Carpet area	1534 sq. ft.
9.	Date of execution of agreement	Not executed
10.	Payment plan	Construction linked plan (as per pg. 47 of the complaint)
11.	Total sale consideration	Rs. 95,18,509/- (As per statement of accounts-cum-invoice, Page no. 61 of the



		complaint)
12.	Total amount paid by the complainants	Rs. 79,51,365/- (As per statement of accounts-cum-invoice cum invoice at pg. no. 61)
13.	Due date of delivery of possession (since no agreement has been executed between the parties hence the due date is being computed from the due date of construction as per schedule of payment at pg. 47)	03.07.2016 (date of commencement of construction: 03.01.2013 at pg. no. 47) (Clause 46: possession of apartment may be offered within a period of 36 months from the date of commencement of construction which shall mean laying of the first plain cement concrete/ mud mat slab of the tower or from the date of execution of agreement whichever is later + 180 days grace period at pg. no.42)
14.	Period of delay in handing over possession	9 months 25 days
15.	Status of project	Complete
16.	Details of Occupation Certificate	Date of OC granted by the competent Authority: Dated 20.04.2017 Tower for which OC obtained- B04
17.	Date of offer of possession	28.04.2017



18.	Specific relief sought	<ul style="list-style-type: none">• Be directed to take the possession of the said apartment;• Pay the balance consideration and delayed interest;• Pay holding charges as per the terms of the agreement;• Outstanding maintenance dues of the maintenance agency.
-----	------------------------	--

3. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainants. An apartment buyer's agreement has not been executed between the parties but the allotment letter is available on record for the aforementioned apartment according to which the possession of the aforesaid unit was to be taken by the respondents/allottees after paying the balance consideration. However, the respondents have failed to fulfil their contractual obligation by not taking the possession within stipulated period despite several reminders. As per the averments made in the complaint instead of clearing the outstanding dues and taking

possession of the subject apartment the complainants filed this complaint no. CC/348/2018 before the National Consumer Dispute Redressal Commission (NCDRC). Hence, this complaint for issuing directions to the respondents.

4. Respondents have not filed the reply to the complaint. Though the respondents have been represented by Sh. Manoj Yadav and Ms. Mehar Kaur Advocates.
5. Arguments heard.
6. Facts are not in dispute. Documents are also not in dispute. It stands established that the arguments made in the complaint have been admitted to be correct by the respondents to the extent that even after receiving of the occupation certificate of the project by the complainants/promoters on 20.04.2017 and offer of possession letter was issued to the respondents on 28.04.2017. Wherein the complainants have asked asking the respondents to clear all their dues on or before 27.05.2017 by submitting the documents as per the offer letter for handing over the possession. However, the respondents adopted a peculiar way instead of clearing dues and filing documents with the complainants, he filed

the above stated complainants before the National Consumer Dispute Redressal Commission (NCDRC) with an intention to side line the provision of section 19(6),(7),(10) of the Act. Here we say that the jurisdiction of this Authority, does not get ousted by a mere fact that the complaint for the refund of the deposited amount filed by the respondents against the complainants is pending before the National Consumer Dispute Redressal Commission (NCDRC). This authority holds that the respondents was/ is under an obligation of making timely payment with interest at the prescribed rate as provided under Rule 15 of the Rules and to take possession of the subject Apartment without further delay.

7. That after the receipt of the offer of possession letter, no plea is now open to the respondents and the plea, if any, taken by them in this regard is nothing but an after thought. The respondents are at the liberty to knock the doors of the superior court/Apex court.
8. The possession of the subject apartment was to be handed over to the respondents within 36 months and 6 months grace period from the date of commencement of construction i.e. 03.01.2013 which comes out to be

03.07.2016. However, admittedly the Offer of possession letter in respect of the subject apartment was issued by the complainants to the respondents on 28.04.2017. Therefore, the complainants/promoters are liable to pay the delayed possession charges (DPC) for the said period to the respondents at the prescribed rate of interest.

9. In view of the above discussion the authority pass this order under section 34(f) of the Act hereby issuing the following directions: -


- a) The respondents/allottees shall pay the balance dues/requisite payments requisite payments and take the possession of the subject apartment as per the provisions of Section 19(6),19(7) and 19(10) of the Act within a period of 30 days;
- b) The complaints/promoters shall pay the delayed possession charges (DPC) with effect from 03.07.2016 to 28.04.2017 at the prescribed rate of interest of 10.20% per annum to the complainants and shall adjust the said amount towards the final dues to be paid by the respondents;

c) The respondents/allottees shall be charged interest at the prescribed rate of interest that is at the rate 10.20% per annum by the complainants/promoters which is same as is being granted to the respondents/allottees in case of delayed possession.

10. Complaint stands disposed of.

11. File be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date 12.12.2019

JUDGEMENT UPLOADED ON 16.05.2020